DRILEX SYSTEMS PTE. LTD.

v.

REGISTRAR OF COMPANIES & ANOR.

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[ORIGINATING MOTION NO. 78 OF 1989]
28 NOVEMBER 1989

CIVIL PROCEDURE: *Applications to strike out plaintiffs action - Order 18 r. 19 - Inherent jurisdiction of the Court under O. 92 r. 4 - Allegation of procedural defect - Plaintiff seeking declaratory reliefs - Contention by Registrar of Companies that action of the plaintiff was an abuse of process - Whether action was a deliberate circumvention of O. 53 - Remedies sought - Whether inappropriate - Injunction - Declaration that new name is undesirable.*

COMPANY LAW: *Registration of company name - Whether 2nd defendant have a better right to use the name - Action under s. 27 of the Companies Act - Whether s. 378 also applicable - Plaintiff - Whether 'aggrieved person' under s. 12(6) of the Act - Right of appeal - Decision of Registrar - Whether a purely administrative/ministered act - Sections 27, 328 of the Companies Act, s. 11 of the Business Registration Act [Sing].*

The plaintiffs were incorporated on 3 October 1979 as Drilex Systems Pte Ltd. The 2nd defendants were originally registered on 7 July 1970 as Grant Tool Oil Co., but subsequently changed their name to Drilex Systems Inc.

On 19 April 1989, the plaintiffs lodged a complaint to the Registrar of Companies against the 2nd defendants.

Notwithstanding this, the Registrar allowed the 2nd defendants to register their new name on 31 March 1989.

The plaintiff failed to resolve the dispute with the Registrar and also the 2nd defendants and commenced this action against both defendants.

Counsel for the Registrar contended that the action was an abuse of process as it sought to quash the decision of a public officer made in the course of administration of the Companies Act and that the form of action should have been commenced by originating summons for an order of *certiorari* under O. 53 of the Rules of the Supreme Court. It was further contended that the plaintiffs action for declaratory reliefs was a deliberate circumvention of the requirement of leave of the Court under O. 53 and that declaratory relief was an inappropriate remedy as it would not result in the quashing of the decision of the Registrar.

The plaintiff case was that they, as an aggrieved person, were exercising their statutory right of appeal under s. 12(6) of the Companies Act.

In view of the plaintiffs sole reliance on their right of appeal under s. 12(6) of the Act, the Court was of the opinion that it only had to consider whether the plaintiffs fall within the ambit of that sector.

Held:

[1] In deciding this issue, the Court is not concerned with whether the Registrar's decision in registering the new name of the 2nd defendants was valid or whether the plaintiffs were entitled to the declaratory reliefs they sought but only as to whether the plaintiffs were aggrieved by such decision.

[2] In determination by the Registrar is not purely an administrative/ministered act, he has to take into account factors consonant with the policy or objects of the Act on the use of names by companies.

[3] In the present case, the plaintiffs were not a party to any decision or act of the Registrar. If the plaintiffs were affected by the Registrar's decision, they were affected only indirectly.

[4] It is not necessary for the plaintiffs to establish a proprietary interest in the name or to establish that they have a better right to the use of the name than the 2nd defendants before they are aggrieved.

[5] By allowing the 2nd defendants to register their new name, the Registrar has deprived the plaintiffs of a benefit or advantage. The loss of this benefit or advantage by reason of the Registrar's decision is sufficient to constitute the plaintiffs as an aggrieved person in terms of s. 12(6) of the Companies Act.

[6] The plaintiffs are not out of time in filing their appeal as the period of 28 days runs from the date on which notice of the decision is given to the appellant.

[7] The plaintiffs will only be entitled to an injunction if they suffer special damages, this point however will have to be resolved at the hearing of the appeal.

[8] As the plaintiffs have not sought to establish a proprietary interest in their name, the 2nd defendants objection to the joinder on this ground therefore fails. There has been no misjoinder of the 2nd defendants in this appeal.

[Applications dismissal.]

Cases referred to:
Heywood v. Hull Prison Board of Visitors [1980] 3 All ER 594
Eshah v. Mariam [1975] 2 MLJ 97
Soon v. Minister of Interior [1969] 2 MLJ 88
Chop Chuah Seong Joo v. Teh [1963] MLJ 96
Chapman v. Deputy Registrar of Companies [1977] 2 MLJ 5
R v. Electricity Commissioners [1924] 1 KB 171
Barnard v. National Dock Labour Board [1953] 1 All ER 1113
Anisminic Ltd. v. Foreign Compensation Commission [1969] 1 All ER 208
PYX Granite Co. v. Ministry of Housing [1959] 1 All ER 208
R v. Registrar of Companies [1912] 3 KB 23
Attorney-General of the Gambia v. N'Jie [1961] AC 617
Salter v. SCNC [1988] 13 ACLR 253
Minister of Labour v. General Iron & Steel Co. (Wollescote) Ltd. [1967] 3 All ER 278
Boyce v. Paddington BC [1903] 1 Ch 109

Legislation referred to:
Uniform Companies Act [Aust] s. 537
Bankruptcy Act 1869 [UK], s. 20
Business Registration Act [Sing], s. 11
Companies (Consolidation) Act 1908 [UK], s. 8(1)
Companies Act [Sing], ss. 12(6), 27(1),(12), 372, 378, (2), (3)
Rules of the Supreme Court [Sing], O. 53, O. 55 rr. 3(2), 8(1), 2(4)

For the plaintiff - Tang Khin Wai
For the Registrar of companies - Janis Woon
For 2nd defendants - Harish Kumar

JUDGMENT

Chan Sek Keong J:

These are two applications to strike out the plaintiffs' action. The first application, that of the 1st defendant, the Registrar of Companies ("the Registrar"), is that the Court should, under O. 18 r. 19 or alternatively, in exercise of its inherent jurisdiction under O. 92 r. 4, strike out the action on the ground that the action is an abuse of process. The second application, that of the 2nd defendants, is made on the said ground as well as on the ground that the action against them should have been commenced by writ of summons.

The plaintiffs were incorporated under the Companies Act ("the Act") on 3 October 1979 as Drilex Systems Pte Ltd. and have since been carrying on business in Singapore and Indonesia in that name. They have also been using their name as part of their telex code.

The 2nd defendants are now called Drilex Systems, Inc. They are a foreign company and were, on 7 July 1970, originally registered under Division II of Part XI of the Act as Grant Tool Oil Company. After merging with a corporation called A-Z International Tool Company, the 2nd defendants, on 5 June 1987, changed their name to Drilex Systems, Inc. The new name was registered under the Act on 31 March 1989.

In January 1988, the plaintiffs became aware that the 2nd defendants had a name identical to theirs when they received telephonic calls from persons desiring to contact the 2nd defendants. On 19 April 1989, the plaintiffs lodged a complaint to the Registrar about the 2nd defendants' activities in Singapore under their unregistered new name, to which the Registrar replied that she would look into the complaint. However, without further reference to the plaintiffs, the Registrar allowed the 2nd defendants to register their new name on 31 March 1989. The plaintiffs, through their solicitors, wrote to the Registrar on 21 April 1989 and requested her to take such action as might be necessary under s. 27 of the Act. On 26 April 1989, the Registrar replied that s. 27 of the Act did not apply to a foreign company, and also that s. 378 was not applicable.

The plaintiffs tried but failed to resolve the dispute with the Registrar and also the 2nd defendants. They then commenced this action against both defendants for, *inter alia,* the following reliefs:

1. A declaration that the same of the 2nd defendants or the change of name of the 2nd defendants as "Drilex Systems, Inc." on or about 31 March 1989 and its registration thereof is undesirable and that the said registration should be set aside.
2. A declaration that the 1st defendant's act or decision in registering and/or allowing the 2nd defendants to register the new name of "Drilex Systems, Inc." on or about 31 March 1989 is wrong in law and/or contravenes s. 27 and/or s. 378 of the Companies Act and that the said act or decision ought to be set aside.
3. An order that the 2nd defendants (whether by themselves or their servants or agents or any of them or otherwise) be restrained and an injunction be granted restraining them from using the name "Drilex System, Inc." as its name in Singapore.

Counsel for the Registrar contended that the action was an abuse of process because, in substance, it sought to quash the decision of public officer made in the course of administration of the Act and that such a form of action should have been commenced by originating summons for an order of *certiorari* under O. 53 of the Rules of the Supreme Court ("the Rules"). It was further contended that the plaintiffs' action for declaratory reliefs

was a deliberate circumvention of the requirement of leave of the Court under O. 53 and that declaratory relief was an inappropriate remedy as it would not result in the quashing of the decision of the Registrar. Reference was made to *Heywood v. Hull Prison Board of Visitors* [1980] 3 All ER 594]; *Eshah v. Mariam* [1975] 2 MLJ 97; *Soon v. Minister of Interior* [1969] 2 MLJ 88; and *Chop Chuah Seong Joo v. Teh* [1963] MLJ 96].

Counsel for the plaintiffs did not challenge head-on the Registrar's contention in relation to the applicability of O. 53 in the circumstances of this case. Accordingly, I do not need to consider this issue or the authorities cited in support thereof. The plaintiffs' case was that they, as an aggrieved person, were exercising their statutory right of appeal under s. 12(6) of the Act, in respect of which the prescribed procedure was contained in O. 55 of the Rules, and that the originating motion was the correct process. Counsel for the plaintiffs also submitted that declaratory reliefs were proper in the circumstances as the Court had the power to give such directions in the matter as seemed proper under s. 12(6): reference was made to *Chapman v. Deputy Registrar of Companies* [1977] 2 MLJ 5; *R v. Electricity Commissioners* [1924] 1 KB 171; *Barnard v. National Dock Labour Board* [1953] 1 All ER 1113; *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 1 All ER 208; and *PYX Granite Co. v. Ministry of Housing* [1959] 1 All ER 208.

In view of the plaintiffs' sole reliance on their right of appeal under s. 12(6) of the Act, I need only consider whether they fall within the ambit of that section. In deciding this issue, I am not concerned with whether the Registrar's decision in registering the new name of the 2nd defendants was valid or whether the plaintiffs are entitled to the declaratory reliefs they have sought, but whether they are aggrieved by such decision.

Section 12(6) of the Act provides as follows:

> (6) Any person aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document or by any other act or decision of the Registrar may appeal to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Registrar:
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> (a) in respect of which any provision in the nature of an appeal or review is expressly provided in this Act; or
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> (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

Counsel for the Registrar contended (1) that s. 12(6) is applicable to decisions or acts of the Registrar which are judicial or quasi-judicial in nature and (2) that the decision to register a change of name of a foreign company made under s. 378 of the Act is an administrative (i.e., a ministerial) act and in respect of which the Registrar had no discretion. Assuming the correctness of proposition (1), I do not think it avails to the Registrar in the present case.

Section 378(2) of the Act provides as follows:

> (2) Except with the consent of the Minister, any change in the name of a foreign company shall not be registered if in the opinion of the Registrar the new name of the company is undesirable or is a name, or a name of a kind, that the minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with s. 372.

The above subsection requires the Registrar, except where he has the consent of or is so directed by the Minister, not to register a change of name of a foreign company if in his opinion the new name is undesirable. In the absence of the consent or a direction from the

Minister (and here, it is not the Registrar's case that the Minister had consented or she has been so directed), the Registrar has to make a determination on the undesirability or otherwise of the new name. The making of such a determination cannot, in my view, be a pure ministerial act. In determining what is undesirable or otherwise, he must take into account factors consonant with the policy or objects of the Act on the use of names by companies. If authority is needed for this proposition, it is found in the case of *R v. Registrar of Companies* [1912] 3 KB 23 where a divisional Court of three Judges held that the Registrar of Companies's decisions to refuse to register the name of company under s. 8(1) of the Companies (Consolidation) Act 1908 was of a quasi-judicial nature and therefore amenable to *mandamus*.

Counsel for the Registrar also submitted that the expression "person aggrieved" in s. 12(6) should be given a restricted meaning to apply only to a decision or act made against or directed against the person claiming to be aggrieved and which affects his legal rights. It was argued that O. 55 was drafted in terms to enable a person against whom a decision is made to appeal to the High Court and not a person against whom no decision has been made. Here, no decision was made or act directed against the plaintiffs. It was further argued that the Registrar's decision did not affect the plaintiffs' proprietary right or interest, if any, in the name as the registration of the new name of the 2nd defendants did not give the latter a better right than the plaintiffs to use that name. It was suggested that the plaintiffs had suffered no legal grievance of a kind that could make them aggrieved in terms of s. 12(6) of the Act.

In support of her submissions, Counsel referred to *Re Sidebotham* [1879] 14 CH D 458 where James LJ said:

> But the words "aggrieved person" (in s. 20 of the Bankruptcy Act 1869) do not mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" is a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

Counsel, whilst conceding that there were more recent authorities which had rejected the restricted test laid down by James LJ, *viz. Attorney-General of the Gambia v. N'Jie* [1961] AC 617, and *Salter v. SCNC* [1988] 13 ACLR 253, contended that these decisions were distinguishable. She submitted that *N'JIE's* case concerned the special status of the Attorney-General as guardian of the public interest and that in *Salter's* case, the parties had proceeded on the basis that the *N'JIE's* test was applicable. A Counsel for the plaintiffs also relied on, *inter alia*, these two decisions to support a liberal interpretation of the expression "any person aggrieved", it is necessary to examine these decisions.

In *N'JIE's* case, the Privy Council decided that although the Attorney-General was not a party to the decision appealed against, he, representing the Crown as guardian of the public interest, was entitled to apply for leave to appeal against the decision of the Court of Appeal which set aside the decision of the Judge striking out the names of the respondent as a barrister and solicitor of the Supreme Court of the Gambia. In delivering the opinion of the Privy Council, Lord Denning, at pp. 634-635, said:

> But the definition of James LJ (in *Re Sidebotham*) is not to be regarded as exhaustive. Lord Esher M.R. pointed that out in *ex parte* official receiver, In re Reed, Bowen & Co. The words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him: but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient

> interest for this purpose? Their Lordships think that he has. The Attorney-General in a colony represents the Crown as the guardian of the public interest. It is his duty to bring before the Judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action. True it is that if the Judge acquits the practitioner of misconduct, no appeal is open to the Attorney-General. He has done his duty and is not aggrieved. But if the Judge finds the practitioner guilty of professional misconduct, and a Court of Appeal reverses the decision on a ground which goes to the jurisdiction of the Judge, or is otherwise a point in which the public interest is concerned, the Attorney-General is a "person aggrieved" by the decision and can properly petition Her Majesty for special leave to appeal. It was for these reasons that their Lordships rejected the preliminary objection and held that the Attorney-General was a "person aggrieved" by the decision of the West African Court of Appeal.

Salter v. NCSC was concerned with the interpretation of the same expression in s. 537 of the Companies (WA) Code, (which was in *pari materia* to s. 12 of the Act). In that case, the Supreme Court decided that a solicitor and the directors of a company to whom the Commissioner for Corporate Affairs (the counterpart of the Registrar under the Act) had sent notices to produce the books of the company, failing which they would suffer a penalty under the provisions of the code, were persons aggrieved by the act of the Commissioner. Olney J said, at p. 258:

> For myself, I would not have thought there could be any real doubt that a person who is placed in jeopardy of prosecution of what must be regarded as a serious criminal offence by the issuing of a notice is a person aggrieved by the issuing thereof in the event of him, for whatever the reason, regarding the obligation placed upon him by the notice to be unreasonable or unnecessary or in some way to be an imposition upon him (as is so in the facts of this case).

In *Salter's* case, Olney J accepted as the most helpful to him the dictum of Burt CJ in *Turner v. Corporate Affairs Commission (WA)* (1987, unreported) that:

> A person is aggrieved ... when you can see that he will suffer or may well suffer financial loss by the fact of the company being struck off. I do not think that you should attempt to construe that expression in any technical way. It is simply a question of looking at the facts and asking whether the person who is making the application has genuine interest in maintaining it.

It was held in *Turner's* case and a series of similar cases that a creditor or shareholder of a defunct company was a person aggrieved by a decision of the Commissioner of Corporate Affairs to refuse to restore the registration of the company to enable it to make claims against other persons.

Counsel also referred to *re Gasboume* [1984] VR 618. In that case, the question was whether W, a bank, was a "person affected" by an order of a Master for the purpose r. 8(1) of the Supreme Court (Companies) Rules 1962 so as to enable W to appeal against the order to the Judge in chambers. The Master had made an *ex parte* order appointing provisional liquidators in each of several winding up petitions presented by former shareholders against a number of what were known as "bottom of the harbour" companies, which mere shell companies used in tax avoidance schemes. W's predecessor was the banker for the companies. After their appointment, the liquidators commenced proceedings against W for damages for negligence, breach of duty or as constructive trustee in paying out funds of each of the companies. The actions were timed so as to cause claims for indemnity which W might have against the companies or other persons including the petitioners to become statute barred. W appealed under r. 8(1) to the Judge in chambers and challenged the validity of the *ex parte* order on the ground the petitioners themselves were not creditors. Nicholson J, holding

that in the context of the rule, the expression "any person affected" was equivalent to the expression "any person aggrieved", and following *N'JIE's* case, decided that the expression should be given a wide meaning, and that W was a person affected by the *ex parte* orders. The relevant part of the judgment (at pp. 647-648) reads:

> In these cases, Westpac says that its interests have been prejudicially affected by the orders made by the Master. It says that the purpose for which the orders were obtained and the direct consequential effect of them having been obtained was to enable the liquidator to commence proceedings against it and the other defendants. It further says, and I have so found, that the obtaining of the orders and the commencement of the actions was timed in such a way as to cause claims for indemnity which it might have against the company and other persons including the petitioning creditors to become statute barred. It says further that the orders may well have been made on the application of persons who themselves were not creditors of the company and that it is deprived of the opportunity of challenging these orders if it has no *locus standi*.
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> The petitioning creditors answer the first proposition by saying that these are mere practical effects of the orders and that no legal rights of Westpac were in any way infringed by the orders made. In effect they say that the company's rights of action against Westpac (if any) have existed throughout and that the proceedings to wind up the company by its creditors do not affect those rights in any way.
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> I think that there is substance in Westpac's first contention. The facts are that otherwise defunct companies are being used by the petitioning creditors as vehicles to pursue claims against Westpac which would otherwise have lain dormant until barred by the effluxion of time. The only persons who have an interest in reviving these companies are the petitioning creditors and the Commissioner for Taxation and the latter has shown no interest in doing so. The companies are evanescent entities with no office, no staff and sham directors and shareholders. The claims of the petitioning creditors against them are based in most cases upon questionable default judgments obtained in respect of claims which no-one has had the opportunity of testing. The *ex parte* orders themselves were obtained in questionable circumstances in all cases except that of Gilbert & Jones Pty Ltd. If the scheme of the petitioning creditors was to proceed to fruition, Westpac would never have the opportunity of testing their claims to be creditors or the validity of any order for winding up. It has already become a defendant to action seeking to recover many millions of dollars from it as a result of the orders made.
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> In all the circumstances I find it impossible to regard Westpac as other than a person affected by the Master's orders. It is clearly not a mere busybody and in my view, it is a person which has genuine grievance because orders have been made which prejudicially affect its interests.

Although the Australian Courts have followed the Privy Council in *N'JIE's* case (which was decided under a very different statute in a very different context involving the standing of the Attorney-General) in giving a less technical meaning to the expression "aggrieved person" in s. 537 of the Australian Uniform Companies legislation that was given by James LJ to the same expression in a different statute in *re Sidebotham*, it should however be noted that in the said Australian cases, the appellants were parties to the decisions or acts of the Commissioner of Corporate Affairs in the sense that, in *re Turner's* case, the decision was given in respect of an application made by the appellant and, in *Salter's* case, the act was directed at the appellant. The point of departure from *re Sidebotham* in those Australian cases was the nature of the grievance that brought the appellants under s. 537. They were already parties to the decision or the act concerned.

In the present case, the plaintiffs were not a party to any decision or act of the Registrar. In this respect, their legal position approximated to that of W in *re Gasbourne,* and that of the Attorney-General in *N'JIE's* case. If the plaintiffs were affected by the Registrar's decision in a way which made them aggrieved, they were affected only indirectly. Accordingly, whilst the Australian decisions on s. 537 of the Uniform Companies Legislation do not go as far as in *N'JIE's* case and *re Gasbourne,* it is necessary for this Court to consider whether it should follow the narrow approach of *re Sidebotham.* Counsel for the Registrar has not convinced me why I should. I think I should not, in the interest of and "in accordance with an enlightened systems of public law" (HWR Wade: Administrative Law, 2nd Edn., at p. 745).

With this in mind, I turn to the position of the plaintiffs. Can they be "aggrieved" in terms of s. 12(6) by the decisions of the Registrar (to which they are not a party) in registering the new name of the 2nd defendants which is identical to that of the plaintiffs? Counsel for the plaintiffs has submitted that the registration under the Act of the name by the plaintiffs in 1979 gave them the exclusive right to use the name. If what is meant by this proposition is that registration of the name under the Act confers on the plaintiffs a proprietary right or interest in the name, I do not agree with it. I do not think that is the position at common law or under the Act. If, however, what is meant by the proposition is that registration of the name under the Act has the effect of preventing another person from registering the name or a similar name under the Act or carrying on business in Singapore under that name, then I agree with it, subject to only one qualification. In my view, the relevant statutory provisions set out below lead to this conclusion. They are ss. 27 and 378 of the Act and s. 11 of the Business Registration Act. The relevant provisions of s. 27 are subsections (1), (10), (11), (12), (13), (14) and (15) which read as follows:

> (1) Except with the consent of the Minister, a company shall not be registered by a name that in the opinion of the Registrar:
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> (a) is undesirable;
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> (b) is identical to that of any other company, corporation or business name;
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> (c) so nearly resembles the name of another company, corporation or business name as to be likely to be mistaken for it; or
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> (d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.
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> (10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as:
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> (a) the name of an intend company;
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> (b) the name to which a company proposes to change its name; or
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> (c) the name under which a foreign company proposes to be registered, either originally or on change of name.
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> (11) A company shall not be registered under s. 19(1) and the Registrar shall not approve the change of name of a company under s. 28(2) unless the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (12).
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> (12) If the Registrar is satisfied as to the *bona fide* of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of two months from the date of the lodging of the application.

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may extend that period for a further period of two months.

(14) During a period for which a name is reserved, no company or foreign company (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(15) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on change of name.

Section 378 provides as follows:

(1) Except with the consent of the Minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) Except with the consent of the Minister, any change in the name of a foreign company shall not be registered if in the opinion of the Registrar the new name of the company is undesirable or its name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with s. 372.

(3) No foreign company to which this Division applies shall use in Singapore any name other than that under which it is registered under this Division.

(4) If default is made in complying with subsection (3), the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Section 11 of the Business Registration Act provides as follows:

Where the Registrar is satisfied that any person registered under this Act carries on business, or any person applying for registration under this Act intends to carry on business, under a name which:

(a) is identical to that of any other corporation or the name under which another person carries on business;

(b) so nearly resembles the name of any corporation or the name under which another person carries on business as to be calculated to mislead, except where such other corporation is in the course of being dissolved or wound up or such other person signifies its or his consent in such manner as the Registrar may require; or

(c) is, in the opinion of the Registrar, undesirable or is a name of a kind which the Minister has directed the Registrar not to accept for registration,

the Registrar may cancel his registration or refuse to register him, as the case may be, unless he changes the name within 6 weeks from the date the Registrar requested him to do so; and any person aggrieved by a decision of the Registrar may appeal to the Minister whose decision shall be final.

The qualification I have indicated is that the Minister must not have consented to the registration of the name in question, in the case of a Singapore company under s. 27(1) and in the case of foreign company under s. 378(1) or (2), as the case may be.

I have referred to the submission of Counsel for the Registrar that the registration did not give the 2nd defendants a better right to use the name. Additionally, Counsel for the 2nd defendants has submitted that the plaintiffs must first establish a proprietary right or interest in the name before they can say that they are aggrieved by the Registrar's decision. I do not accept either submission. In my view, it is not necessary for the plaintiffs to establish a proprietary interest in the name or to establish that they have a better right to the use of the name than the 2nd defendants before they are aggrieved. I have already stated that the registration of the plaintiffs' name had the effect of preventing any one else from subsequently registering the same name, save where the Minister has consented. The earlier registration conferred on the plaintiffs a statutory protection in that they were assured that the Registrar would not allow the 2nd defendants to register an identical name if she was of the opinion that it was an undesirable name. By allowing the 2nd defendants to register their new name, the Registrar has deprived the plaintiffs of this benefit or advantage. Indeed, the protection conferred on the plaintiffs commenced at a stage earlier than the actual registration of the new name. Section 27(12) of the Act prohibits the Registrar from allowing a foreign company from reserving a name that contravenes s. 27(1). In my view, the loss of this benefit or advantage by reason of the Registrar's decision (and here, I must make clear that I am not concerned with legality or otherwise of the Registrar's decision), is sufficient to constitute the plaintiffs as an aggrieved person in terms of s. 12(6). The plaintiffs' grievance may be considered from another perspective. If they wish to recover this initial advantage or benefit, the plaintiff will have to commence legal proceedings against the 2nd defendants, and, in order to succeed, to prove a proprietary, interest or right in the name, which but for the decision of the Registrar they would not have to do. The plaintiffs may or may not succeed in such proceedings, but that, in my view, is immaterial to their standing for the purpose of appealing under s. 12(6) of the Act. The situation here is analogous to the appellants in re Gasbourne having to defend actions which could not have been commenced but for the *ex parte* orders of the Master.

The Registrar has also submitted that the appeal has been filed outside the period of 28 days allowed by O. 55 r. 3(2) of the Rules. In my view, and here I agree with the submission of Counsel for the plaintiffs, the period of 28 days runs from the date on which notice of the decision is given to the appellant: see r. 2(4) *Minister of Labour v. General Iron & Steel Co. (Wollescote) Ltd.* [1967] 3 All ER 278. In the present case, no notice of the decision has been given to the plaintiffs at all. The plaintiffs are accordingly not out of time in filing their appeal.

I turn now to the application of the 2nd defendants. It was contended by Counsel for the 2nd defendants that (1) the plaintiffs' claim against the 2nd defendants was for passing off which was a claim in tort, and that the proper process was by writ of summons under O. 5 r. 2, and (2) O. 55 had no application. This ground, in my view, is not relevant as the plaintiffs have not, in this appeal, sought a declaration that they have a proprietary interest in the name or that the 2nd defendants have passed off their new name as that of the plaintiffs'. The submission of Counsel for the plaintiffs was that (1) if the plaintiffs were to succeed in their appeal, they would be entitled to restrain the 2nd defendants from using the new name on the ground that it would then be an offence for 2nd defendants to continue to use their new name in Singapore: see s. 378(3) of the Act, and (2) by virtue of O. 15 r. 6(1), no cause shall be defeated by reason of a misjoinder.

In my view, there are two separate issues involved in the 2nd defendants' application. The first is whether the 2nd defendants may be joined as a party in an appeal under O. 55 of the Rules against a decision of the Registrar. The second issue is whether the plaintiffs are entitled

to an injunction to restrain a breach of s. 378(3) of the Act if they do not seek, as they have not done, to establish that they have a proprietary interest in the name. As regards the first issue, O. 55 r. 3 provides that notice of the originating motion must be served on all parties to the decision appealed against. The 2nd defendants are a party to the decisions of the Registrar. They have been notified of the appeal by their inclusion as a defendant. This is not the same thing as providing that a party to a decision under appeal shall be a party to the appeal, but it is very close to it. No argument has been addressed to me on whether O. 15 r. 4(1) is applicable to this appeal.

As regards the second issue, it does not follow that if the 2nd defendants were to contravene s. 378(3) of the Act (assuming their new name were de-registered), the plaintiffs would be entitled to an injunction. The current state of the law is that unless the plaintiff suffer a special damage, they may have no *locus standi* to sue for an injunction without joining the Attorney-General: see Buckley J at p. 114, *Boyce v. Paddington BC* [1903] 1 Ch 109; see generally Sharpe on Injunction and Specific Performance paras. 307-322. Neither Counsel has addressed me on this point presumably because this issue will be resolved at the hearing of the appeal.

The 2nd defendants' argument in support of their application was that the plaintiffs were in effect suing in tort for passing off. This is not so, as is plain from the third prayer in the originating motion. The plaintiffs have not sought to establish a proprietary interest in their name. The 2nd defendants' objection to the joinder on this ground therefore fails. I have also not been persuaded that there was misjoinder of the 2nd defendants in this appeal.

For the above reasons, the applications of the Registrar and the 2nd defendants are dismissed with costs.

Also found at [1990] 1 CLJ 338